

EXHIBIT 1

INTRODUCTION

Respondent D. Barton Doyle has been a member of the Sierra Madre City Council since April 1996. As a public official, Respondent was prohibited by Government Code Section 87100 of the Political Reform Act (the “Act”)¹ from making, participating in making, or using his official position to influence any governmental decision in which he knew or had reason to know that he had a financial interest.

In this matter, on February 14, 2000, Respondent participated in discussions about, and voted on, issues concerning the expansion of Utility District #2, and funding for the expanded district. At the time of the discussions and the vote, Respondent owned a residence that was located outside of the boundaries of Utility District #2. By expanding the district, Respondent’s residence was brought within the boundaries of the district. By participating in the discussions and vote, Respondent made and participated in making a governmental decision in which he knew or had reason to know that he had a financial interest.

For the purposes of this Stipulation, Respondent’s violation is stated as follows:

On February 14, 2000, Respondent D. Barton Doyle made and participated in making a governmental decision in which he knew or had reason to know that he had a financial interest, by voting as a member of the Sierra Madre City Council to expand and fund the expansion of Utility District #2, in violation of Section 87100 of the Government Code.

SUMMARY OF THE LAW

Section 81001, subdivision (b) states that public officials should perform their duties in an impartial manner, free from bias caused by their financial interests or the financial interests of persons who have supported them. In order to accomplish this purpose, Section 87100 prohibits a public official from making, participating in making, or attempting to use his or her official position to influence any governmental decision in which the official knows or has reason to know that he or she has a financial interest.

Under Regulation 18702.1, subdivision (a), a public official makes a governmental decision, for the purposes of Section 87100, when the official, among other things, “votes on a matter.” Under Regulation 18702.2, subdivision (b)(2), a public official participates in a governmental decision, for the purposes of Section 87100, when the official, among other things, presents any analysis or opinions, orally or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at Title 2, California Code of Regulations, sections 18109 through 18997. All regulatory references are to Title 2, Division 6, of the California Code of Regulations.

Section 87103, subdivision (b), as it was in effect in 2000, provided that a public official had a financial interest in a decision within the meaning of Section 87100, if it was reasonably foreseeable that the decision would have a material financial effect, distinguishable from the effect on the public generally, on any real property in which the public official had a direct or indirect interest worth \$1,000 or more.²

Whether the reasonably foreseeable financial effect of a governmental decision on an economic interest is material depends on the nature of the interest, whether the effect is direct or indirect, and, if indirect, the degree to which the economic interest is involved in the decision.

Under Regulation 18704.2, as it was in effect in February 2000, an interest in real property was directly involved in a governmental decision if the decision involved the zoning or rezoning, annexation or deannexation, sale, purchase, or lease of the property, or the inclusion in or exclusion of the property from any city, county, district or other local governmental subdivision.

In February 2000, if an official's real property interest was directly involved in a decision before the official's agency, then any reasonably foreseeable financial effect of the decision on the official's property interest was deemed material. (Regulation 18705.2, subdivision (a).)

The financial effect of a decision is "reasonably foreseeable" if there is a substantial likelihood, and not just a mere possibility, that the effect will occur. (In re Thorner (1975) 1 FPPC Ops. 198.)

The effect of a decision on an official's economic interest is distinguishable from the effect on the public generally unless the decision will affect the public official's economic interest in substantially the same manner as it will affect a "significant segment" of the public. As it applies to decisions affecting real property interests, a "significant segment" of the public is defined as either: (a) 10% or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district that the official represents; or (b) 5,000 property owners or homeowners in the jurisdiction of the official's agency. (Regulation 18707.1.)

SUMMARY OF THE FACTS

Respondent Was a Public Official as Defined by the Act

Respondent has been a member of the Sierra Madre City Council since April 1996. As a member of the City Council, Respondent was a public official as defined by Section 82048, and was therefore subject to the conflict of interests prohibition of Section 87100.

Respondent Participated in Making a Governmental Decision

In this matter, on February 14, 2000, Respondent participated in discussions about, and voted on, the expansion of Utility District #2 and funding for the expanded district. This

² In January 2001, the threshold increased to \$2,000 for interests in real property.

constituted governmental decision-making under Regulation 18702.1, subdivision (a), and participation in governmental decision-making under Regulation 18702.2, subdivision (b)(2).

Respondent Had an Economic Interest that could be Affected by the Governmental Decision

At the time of the discussions and the vote, Respondent owned a residence that was located outside of the boundaries of Utility District #2. By expanding the district, Respondent's residence was brought within the boundaries of the district.

Respondent's Economic Interest Was Directly Involved in the Decision

Under Regulation 18704.2(a), as it was in effect in 2000, a public official's real property interest was directly involved in a decision if any part of the official's real property was the subject of the governmental decision. As the decision in this instance was whether to expand the utility district to include Respondent's property, his real property interest was the subject of the decision.

Applicable Materiality Standard

As Respondent's property was directly involved, the decision had a material effect on his property so long as there was any reasonably foreseeable effect at all. This is commonly referred to as the "one penny" rule. The financial effect of a decision is "reasonably foreseeable" if there is a substantial likelihood that the effect will occur; there must be something more than a mere possibility that the effect will occur. (*In re Thorner, supra.*)

It Was Reasonably Foreseeable That the Applicable Materiality Standard Would be Met

It was reasonably foreseeable that the applicable materiality standard would be met. Expansion of the utility district had the purpose and effect of bringing underground utilities to the properties included within the expanded district. Underground utilities are generally deemed to be an improvement to properties and neighborhoods; therefore, it was reasonably foreseeable that Respondent's property would experience a financial effect in the form of improved utility delivery and enhancement of the neighborhood.

The Public Generally Exception Does Not Apply

Prior to the City Council making the decision to expand and fund the expansion of Utility District #2, Respondent announced that he had reviewed the conflict of interest provisions of the Act, and concluded that he did not have a conflict of interest that would prevent him from participating in the decision. Respondent then voted on the issue without first seeking the advice of legal counsel or the FPPC. In a subsequent conversation with Enforcement Division staff, Respondent stated that he simply misread the application of the "public generally" exception.

Contrary to Respondent's statement prior to the vote, the public generally exception did not allow him to participate in the vote. Although the effect of the decision on Respondent's property interest was substantially the same as the effect of the decision on a majority of the residential properties within the expanded utility district, the number of those properties did not

total 5,000 or 10% of all property owners or all homeowners in the jurisdiction of the official's agency or the district he represented, as required by Regulation 18707.9. According to census figures for the year 2000, the City of Sierra Madre had a population of 10,578 in 4,756 households. The number of residents and the number of households within the boundaries of the expanded utility district were both less than 100.

Consequently, by participating in the decision to expand and fund the expansion for Utility District #2, Respondent violated section 87100 of the Government Code.

CONCLUSION

This matter consists of one count which carries a maximum possible administrative penalty of Two Thousand Dollars (\$2,000.00). A review of past cases approved by the Commission indicates that the administrative penalty approved in similar circumstances has ranged from \$500 - \$2,000 per violation, with the norm being \$1,500 per violation. Only the most egregious circumstances warranted a maximum penalty of \$2,000 per violation, and only the most mitigated circumstances warranted a penalty of \$500.

Respondent was aware of the conflict of interest provisions of the Act. Despite owning real property within the boundaries of the Utility District expansion, Respondent continued to participate actively in a decision that could affect his own real property interest. By participating in that decision, Respondent violated Section 87100 of the Government Code.

The conduct of participating in a governmental decision in which an official has a financial interest is a serious violation of the Act. As an experienced public servant, Respondent should have known of his obligation to avoid conflicts of interest. However, in mitigation, Respondent made some minimal effort to determine whether he had a conflict of interest, by consulting the Act, and received little actual benefit from his participation. Accordingly, a penalty of One Thousand Five Hundred Dollars (\$1,500.00) is appropriate.